than one thousand cases have been added, making in all some fifty-seven hundred cases and statutes cited, and these citations excel in their careful exhaustion of all the minor sources, such as the law journals, the *Times*, and the *Justice of the Peace* reports. At the head of each chapter is a list of references to the corresponding chapters in other treatises — a useful feature, which could have been improved by giving a table of abbreviations and editions used. The most valuable feature of Taylor's treatise, namely, the English statutory citations, now appears here also, with equal fulness. A casual testing finds no omission of the latest English decisions in courts of last resort. Indeed, the painstaking search for every vestige of a ruling is apparent on every page. As a lawyer's hand-book, it is difficult to suppose that this work can be improved upon.

As a scientific instrument for the geodesy of the law of evidence, this treatise makes no claims. It need not therefore be judged from that point of view. Otherwise it might be well worth while to break a friendly lance, after the manner of Sir Nigel Loring, over the author's amalgamation of the diverse rules against reputation and opinion (ch. xxxv); the coördination of the rules of privilege for a third person's title-deeds, and the rules of discovery and of privilege for a party's documents (ch. xvi); and the treatment of that *instantia crucis* of evidence, the *Res Gestae* doctrine (ch. vi). It may be noted that Mr. Phipson, following Professor Thayer, cites John Horne Tooke's Case, in 1794, as the earliest occurrence of this phrase (p. 43); but it appears in fact more than a century earlier, in the Ship Money Case (3 How. St. Tr. 988), in 1637. The interesting point is that this earlier instance uses the plural *res gestae*, although Professor Thayer's favorite idea that the singular *res gesta* was the more correct was supposed to be confirmed by its being the earlier form.

Nevertheless, Mr. Phipson's work has thoroughly freed itself from the unreasoning conventions and meaningless fictions of the older law, and has taken careful account of all the established results of modern theory. In this respect his book should be highly valued by the practitioner for its safe and enlightening guidance. For example, under Burden of Proof (ch. iv), Best Evidence (ch. iv), *Res Inter Alios Acta* (ch. xi), and Parol Evidence (ch. xliv), the great principles of analysis which Professor Thayer's writing and teaching succeeded in making popular and commonplace in this country are found plainly accepted as orthodox. If such changes in the literature of the most obstinate branch of the law can be effected so widely and so soon, through the single-handed labors of one man of science, we need not despair to behold in due season the successful leavening of all parts of our law by any doctrines, however radical, which can convince the profession of their soundness. J. H. W.

MARKETABLE TITLE TO REAL ESTATE By Chapman W. Maupin. Second Edition. New York: Baker, Voorhis & Company. 1907. pp. lxxvi, 910. 8vo.

"Marketable Title" is still known as the title which a court of equity will force a grantor to take at the suit of the seller. The use of this term is wide, and is kept constantly in mind by the more expert conveyancers, for in passing upon objections to title those are properly abandoned which would not cause a court to call it unmarketable. The learned author has dealt with this particular subject directly only in Chapter 31, pp. 705-791. The balance of the volume, some 800 pages, cuts across various topics of the law. An attempt has been made to cover more or less completely such remotely related subjects as suits for specific performance of contracts for the sale of real estate, covenants of title, estoppel by deed, various subjects of the law of damages and the law of contracts, as well as abstracts of title and the formal requirements of conveyances. One may reasonably wonder why he did not treat also of delivery, the recording acts, and the specific performance of contracts relating to real estate which are not in writing. But the author's aim, even if it were successful, might be criticized. The practitioner's power in dealing with a given problem is not increased by finding it treated in relation to a particular subject-matter, but

divorced entirely from its proper environment and associations. He is usually able to analyze his case and to locate the questions at issue in some scientifically analyzed topic of the law. He wants, then, the best treatise upon that fundamental subject. He wants to consider his particular problem in the light of the whole subject with which it is associated. He is necessarily repelled by a collection of topics such as the learned author has given us.

In the treatment of the various topics the author has in the conventional lines made excellent statements of the law, and set out with care conflicting views, with reliable, though not exhaustive, citations. It seems to us, however, that the author does not estimate the great difficulty of writing an authoritative and intelligent treatise on detached parts of many different fundamental topics. In some instances his failure is plain, — as where he attempts to deal with abstracts of title. With a topic having such a number of local variations he can do nothing effective in the space devoted to it. In other topics there is an utter failure to get hold of the best ideas upon the subject. Thus, observe in § 22 the loose way the author speaks of sealing as at common law, an indispensable formality in the execution of a deed of conveyance of a present freehold interest in possession. No one moderately acquainted with the history of conveyancing could ever have written such a sentence. To the transfer of a freehold in possession no seal was necessary at common law, for the conveyance would have been by feoffment. A writing and signature would only have been necessary by the Statute of Frauds of Charles II. If the instrument of conveyance operated by way of bargain and sale under the Statute of Uses of Henry VIII, then a seal was only necessary by the Statute of Enrolments of Henry VIII; but, as Tiedeman most clearly shows, it is extremely doubtful if the Statute of Enrolments has ever had any proper place in the law of this country, for its application was entirely local (Tiedeman, Real Property, 3 ed., § 549). Hence such a decision as Jackson *v.* Wood (12 Johns. (N. Y.) 73), which the learned author did not cite, holding that a seal is absolutely necessary, may be regarded as open to criticism. So, in respect to estoppel by deed, the learned author wholly misses the problem where A mortgages to B and then makes a second mortgage to C with full covenants of warranty but subject to the first mortgage, and upon foreclosure of the first mortgage A purchases the property. Is A or the second mortgagee entitled? He does indeed state the bare holding of Rooney *v.* Koenig (80 Minn. 483), but he fails entirely to note in this connection Ayers *v.* Philadelphia Brick Co. (159 Mass. 84, 3 Gray, Cas. on Property, 2 ed., 548) and the very interesting argument on principle that may be made the other way.

Another difficulty with the present work — a difficulty too which is met with in almost all the text-books of today — is this: the author seems to be writing upon the assumption that there is a sort of general American law which he is expounding. He seems to derive the propositions which he formulates by a process of induction in which the sources are a more or less second-hand familiarity with the general subject dealt with. When he comes to the citation of cases to illustrate his propositions, he does not seem to care where they come from so long as they support what is said. Sometimes there is a "conflict of authority." The learned author's course would have been all very well thirty years ago, when the law of no jurisdiction was anywhere near complete in itself, and when there were rules of the common law which all alike were likely to follow. But today in each of the larger and more important jurisdictions of the United States the adjudicated cases have made the law to a large extent complete in itself, and the sound and well-equipped lawyer must know the law in terms of the decisions of his particular jurisdiction, and know the particular problems which have developed there. To such practitioners the present work is a curiosity. It is not, like Wigmore on Evidence, a study of the comparative law of forty-five jurisdictions, pointing out the fundamental problems of the subject and indicating by exhaustive citations how far the decisions of each state conform to or depart from a usual or standard rule. It is, on the contrary, a composite as hazy, inexact, and curious in its outlines as the composite photograph of the hundred beauties of all nations. A. M. K.